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HAROLD B. WILLEY, C

No. 409

In the Supreme Court of the United States

OCTOBER TERM, 1953

THE BALTIMORE TRANSFER COMPANY, DAVIDSON TRANSFER AND STORAGE COMPANY, COCHRANE TRANSPORTATION COMPANY, ET AL., APPELLANTS

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MOTION OF THE INTERSTATE COMMERCE COMMISSION TO AFFIRM

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. 6025

THE BALTIMORE TRANSFER COMPANY, ET AL., PLAINTIFFS

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA, DEFENDANTS

MOTION TO AFFIRM

Pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellees Interstate Commerce Commission and United States of America move that the judgment of the District Court be affirmed.

This is a direct appeal from a final judgment, entered July 8, 1953, of a three-judge District Court convened pursuant to 28 U.S.C. 2284 and 2325, which dismissed a complaint seeking to set aside orders of the Interstate Commerce Commission. The appeal was allowed on September 4, 1953, and appeal papers were served upon appellees the same day.

Quinn Freight Lines, Inc. ("Quinn") is a certificated motor common carrier authorized to operate between Boston, Massachusetts, and Baltimore, Maryland. After full administrative proceedings unchallenged as to regularity, Division 4 of the Commission

approved an application under Section 5(2)(b) of the Interstate Commerce Act for Quinn's purchase of the operating rights of two other carriers: (1) Neale, authorized to operate between Baltimore and Reedsville, Virginia, through Washington, D. C., and (2) Wadkins, whose certificate covered operations between Washingeon, D. C. and Richmond, Virginia.[1] Under the integrated authority resulting from the Commission's order of approval, Quinn will provide single line service between Boston and points in the areas served by Neale and Wadkins. Appellants are competing motor carriers who serve some of these same points.

In approving the purchases as "consistent with the public interest" (Section 5(2)(b)), the Commission found that approximately one-third of the freight that moves through Quinn's Baltimore terminal is interchanged there with connecting carriers for shipment to points in Washington and Virginia; that elimination of such interchanges would reduce shipping time and misplacements of and damage to freight, and would effect savings through elimination of labor and rebilling and reduction in damage claims; that the opposing carriers (appellants) do not serve directly "a very large portion" of the Virginia area served by Neale, and have not interchanged any freight with Neale and Wadkins or much with Quinn; and that, although Quinn probably would divert "some freight" from appellants, such diversion would not impair their ability to continue performing their obligations as common carriers.

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[1] The Commission previously had granted Quinn temporary authority to lease Neale's operating rights pending Commission determination of their purchase. The temporary order of approval, which appellants challenged unsuccessfully in the district court, is not involved in this appeal.

A petition for reconsideration was denied by the entire Commission, and the district court, in a thorough opinion which carefully reviewed the evidence, unanimously sustained the Commission's order.

Appellants' 36 assignments of error raise no substantial questions justifying further review by this Court. They merely reiterate the contentions—fully considered and rejected by the district court—that the Commission's findings were insufficient and without adequate evidentiary support. As the district court held, the Commission's ultimate statutory finding that the proposed purchases "will be consistent with the public interest," together with the subsidiary findings and discussion in its report, plainly are adequate to support the order.[2] *Alabama Great Southern R. Co.* v. *United States*, 340 U.S. 216, 228. In reviewing the evidence, the district court considered both the evidence supporting and "the body of evidence opposed" to the Commission's view, *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 488, and concluded that "the testimony as a whole" supported the Commission's conclusion. As the court correctly held, the question before it was not "whether, on like testimony this Court would have made a similar ruling, but simply whether the Commission's decision was based upon adequate findings, supported by substantial

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[2] There is no merit to appellants' contention that the Commission failed to make findings on the "basic and material" issues of (1) the "dormancy" of Neale's rights between Baltimore and Washington (assignments of error 18-28), and (2) the alleged invalidity of Quinn's interchange with Neale (assignments of error 30-34). As the district court noted, the Commission expressly found that Neale had made a large number of interchange shipments between Baltimore and Washington-Virginia in 1950 and 1951, and that, despite the interchange agreement, these operations at all times had been "actively and consistently conducted under Neale's certificate."

evidence, as to which the answer is clearly 'yes.'"[3] In ascertaining where the public interest lay, the Commission had to balance the benefits to shippers from single line service against any disadvantage to Quinn's competitors. Cf. *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 66. The determination of whether the public interest would best be served by approving or disapproving the transfer of operating rights under these circumstances is a matter peculiarly within the Commission's expert judgment, *McLean Truck Co.* v. *United States*, 321 U.S. 67, 87-88, which the courts will not overturn as long as it has a "rational basis." *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 287.

CONCLUSION

For the foregoing reasons, it is clear that this appeal presents no substantial question. It is therefore respectfully submitted that the judgment of the district court should be affirmed.

ROBERT L. STERN,
Acting Solicitor General.

EDWARD M. REIDY,
Chief Counsel, Interstate Commerce Commission.

SEPTEMBER, 1953.

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[3] Contrary to appellants' contention, the Administrative Procedure Act did not change the rule of administrative finality that the Commission's findings, if supported by substantial evidence, are conclusive. It merely requires the reviewing court to determine such substantiality on the record as a whole, including "the body of evidence opposed" to the Commission's views. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 488. As noted in the text, this was precisely the test applied by the district court in upholding the Commission's order.

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